



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY TIDEWATER REGIONAL OFFICE*

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### **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO PERDUE AGRIBUSINESS LLC FOR Perdue Agribusiness LLC – Chesapeake Facility Registration No. 60277**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Perdue Agribusiness LLC - Chesapeake for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, and the applicable Prevention of Significant Deterioration permit and Federal Title V Operating permit and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2015 Title V Permit" means a Title V Federal Operating Permit, which was issued under the Virginia Air Pollution Control Law and Regulations on March 31, 2015.
2. "2017 Title V Permit" means a Title V Federal Operating Permit, which amended the 2015 Title V Permit on July 12, 2017 under the Virginia Air Pollution Control Law and Regulations to Perdue Agribusiness LLC – Chesapeake.
3. "2020 PSD Permit" means a Prevention of Significant Deterioration Stationary Source to Construct and Operate Permit which was issued under the Virginia Air Pollution Control Law and Regulations to Perdue Agribusiness LLC – Chesapeake on October 28, 2020. The 2020 PSD Permit was superseded by the 2021 PSD Permit.
4. "2021 PSD Permit" means a Prevention of Significant Deterioration Stationary Source to Construct and Operate Permit which was issued under the Virginia Air Pollution Control Law and Regulations to Perdue Agribusiness LLC – Chesapeake on February 2, 2021.

5. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Facility" means the Perdue soybean oil extraction plant located at 501A Barnes Road, Chesapeake, Virginia.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
11. "Perdue" means Perdue AgriBusiness LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Perdue is a "person" within the meaning of Va. Code § 10.1-1300.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
13. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Perdue owns and operates the Facility in Chesapeake, Virginia, which processes soybeans through a soybean oil extraction plant to obtain soybean oil for commercial purposes.
2. Perdue is subject to the 2021 PSD Permit, which superseded the 2020 PSD Permit, and the 2015 Title V Permit as amended by the 2017 Title V Permit. The 2021 PSD Permit and the superseded 2020 PSD Permit, and the 2015 Title V Permit as amended by the 2017 Title V Permit authorize Perdue to discharge, within limits, hexane solvent emissions from the hexane recovery process to the ambient air during the extraction of soybean oil from soybeans. The 2021 PSD Permit condition 45 provides a truck grain load out limit for EU-33 of 180,000 tons per year. Perdue submitted an application on

October 25, 2021 to update the 2017 Title V Permit condition 46 to a truck load out limit for EU-33 to from 100,000 to 180,000 tons per year.

3. On August 16, 2021, by email, Perdue reported that during the months of December 2020 and July 2021 the monthly rolling 12 month solvent loss ratio ("SLR") deviated from the 2021 PSD Permit, which superseded the 2020 PSD Permit, and the 2015 Title V Permit as amended by the 2017 Title V Permit, conditions of 0.18 gallons per tons of beans processed. On September 7, 2021, Perdue reported that for the month of August 2021, the monthly rolling 12 month SLR also exceeded the permit limits of 0.18 gallons per tons of bean processed.
4. The SLR exceedance that began in December 2020 continued through August 2021, calculated monthly as the sum of each consecutive 12-month period.
5. Perdue reported SLR rates ranging from 0.19 to 0.20 as shown in the table below (calculated monthly as the sum of each consecutive 12-month period):

Report Month	Reported SLR (Permit Limit 0.18)	% over limit
December 2020	0.19	5.6
January 2021	0.19	11.1
February 2021	0.19	11.1
March 2021	0.20	11.1
April 2021	0.19	5.6
May 2021	0.19	5.6
June 2021	0.20	11.1
July 2021	0.20	11.1
August 2021	0.20	11.1
September 2021	0.20	11.1
October 2021	0.19	5.6

6. The superseded 2020 PSD Permit and the 2021 PSD Permit condition 32 limits the SLR of solvent to not more than 0.18 gallons solvent per tons of soybeans processed, calculated monthly as the sum of each consecutive 12-month period.
7. The 2015 Title V Permit and as amended 2017 Title V Permit condition 88 limits the SLR of solvent to not more than 0.18 gallons solvent per tons of soybeans processed, calculated monthly as the sum of each consecutive 12-month period.
8. Va. Code § 10.1-1322(A) provides that permits may be issued, amended, revoked, or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders.
9. On August 30, 2021, based upon the August 16, 2021 report from Perdue, DEQ issued NOV number ATRO001947 for exceedance of the superseded 2020 PSD Permit and 2021 PSD Permit Condition 32 and exceedance of the 2015 Title V Permit and as amended 2017 Title V Permit condition 88 limiting SLR to not more than 0.18 gallons solvent per tons of soybeans processed as described in paragraphs C(3) through C(7), above.

10. On September 1, 2021, Perdue responded to the NOV. According to Perdue, the exceedances occurred because newer crop soybeans presented a challenge to process for removal of the soybean oil and related recovery of the oil solvent hexane from the soybean cake.
11. Based on the August 16, 2021 and September 7, 2021 reports from Perdue, the Board concludes that Perdue violated the 2021 PSD Permit, which superseded the 2020 PSD Permit, condition 33 and the 2015 Title V Permit as amended 2017 Title V Permit condition 88 as described in paragraphs C(3) through C(7), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Perdue, and Perdue agrees:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$24,297 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Perdue shall include its Federal Employer Identification Number (FEIN) \_\_\_\_\_ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Perdue shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Perdue for good cause shown by Perdue, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the Perdue NOV No. ATRO001947 dated August 30, 2021. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Perdue admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Perdue consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Perdue declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Perdue to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Perdue shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Perdue shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Perdue shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

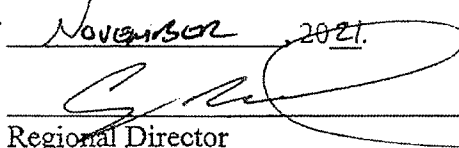
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Perdue. Nevertheless, Perdue agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Perdue has completed all of the requirements of the Order;
  - b. Perdue petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Perdue.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Perdue from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Perdue and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Perdue certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Perdue to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Perdue.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Perdue voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30 day of November, 2021.

  
Regional Director  
Department of Environmental Quality

Perdue voluntarily agrees to the issuance of this Order.

Date: 11/24/21 By: Sharon L Clark, SVP Regulatory Affairs  
(Person) (Title)  
& Compliance

Perdue AgriBusiness LLC

State of MD  
~~Commonwealth of Virginia~~ Maryland  
City/County of Wicomico

The foregoing document was signed and acknowledged before me this 24 day of  
November, 2021, by Dianna L Cockey who is  
associate of Perdue, on behalf of the limited liability company.

Dianna L Cockey  
Notary Public

N/A  
Registration No.

My commission expires: 12/8/24

Notary seal:



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**APPENDIX A  
SCHEDULE OF COMPLIANCE**

Perdue AgriBusiness LLC shall, within 30 days of the effective date of this Order:

1. Submit to DEQ for review and approval an approvable Corrective Action Plan ("CAP") to return the Facility to compliance for SLR.
2. Submit all requirements of this Appendix A to: Regional Director, DEQ Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462